

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

SCOTT JOSEPH NJOS,
Plaintiff,

v.

S. ARGUETA, et al.,
Defendants.

CIVIL ACTION NO. 3:CV-12-1038
(Judge Kosik)

MEMORANDUM

Before the court is plaintiff's motion for review of the Magistrate Judge's Orders deeming Docs. 36-39 withdrawn (Doc. 47) and a denial of reconsideration of the Order (Doc. 50). For the reasons which follow, we will review the Orders of the Magistrate Judge, but we will let the Orders stand.

BACKGROUND

Plaintiff, Scott Njos, an inmate at the United States Penitentiary- Lewisburg, Lewisburg, Pennsylvania, filed a pro se Bivens civil rights action pursuant to 28 U.S.C. §1331 on June 1, 2012. In his complaint, plaintiff raises claims regarding the use of excessive force, retaliation, denial of access to the courts, and denial of adequate medical treatment.

As part of an extensive procedural history, on January 14, 2013, plaintiff filed a Motion for Protective Custody and a Brief in Support thereof (Docs. 36 and 37). Plaintiff also filed a Motion Objecting to Defendants' Representation by the United States and a Brief in Support thereof (Docs. 38 and 39). Because no Certificates of Service were attached, the Magistrate Judge issued an Order on January 17, 2013 directing plaintiff to serve the Motions and Briefs (Docs. 36-39) on defendants and to file Certificates of Service with the court. Plaintiff was advised that if he failed to comply with the Order, his Motions could be deemed withdrawn. Because plaintiff did

not comply with the court's Order (Doc. 45), on February 4, 2013, the Magistrate Judge deemed the Motions as withdrawn (Doc. 47). On February 13, 2013, the Magistrate Judge denied a Motion for Reconsideration (Doc. 50).

On March 4, 2013, the plaintiff filed a Motion for Review of Magistrate's Order (Doc. 55). In reviewing a non-dispositive Order of the Magistrate Judge, the standard to be applied by this court is whether the decision of the Magistrate Judge has been shown to be "clearly erroneous or contrary to law." 28 U.S.C. §636 (b)(1)(A). While plaintiff asserts that he did give a Certificate of Service to a prison counselor, the document was not received by this court. The court notes that plaintiff is a litigious inmate with several actions pending before this court and that numerous documents filed on his behalf have been received by the court.

Finally, the documents which were deemed withdrawn by the Magistrate Judge requested this court to change plaintiff's block and cell status (Doc. 36) and to prevent the defendants from receiving representation by the United States (Doc. 38). We find the likelihood of success on the merits of these requests to be tenuous, and we do not believe plaintiff's underlying lawsuit was affected by the motions being deemed withdrawn. We do not find that the Magistrate Judge's Order deeming plaintiff's Motions to be withdrawn are "clearly erroneous or contrary to law."

Accordingly, the Motion for Review of the Magistrate Judge's Order (Doc. 55) will be denied. The Orders of the Magistrate Judge (Docs. 47 and 50) will stand. An appropriate Order will follow.

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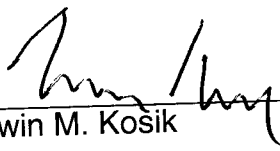
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(Judge Kosik)

ORDER

AND NOW, THIS 10th DAY OF APRIL, 2013, IT IS HEREBY ORDERED
THAT:

- (1) The Motion for Review of the Magistrate Judge's Order (Doc. 55) is
DENIED; and
- (2) The Orders of the Magistrate Judge (Docs. 47 and 50) will **STAND**.


Edwin M. Kosik
United States District Judge